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NOTE ON AMERICAN NEGOTIATIONS FOR COMMERCIAL TREATIES,  
1776-1786.

Among the documents transmitted by Professor Van Houtte is the project of a treaty with Austria which was proposed by Jefferson in May, 1786, to the Comte de Mercy-Argenteau, minister of the Imperial government at the court of Versailles; but, as will be pointed out farther on, this project approximates so closely the treaty concluded with Prussia on September 10, 1785, that it is not here printed. The project itself possesses, however, an interest of its own, inasmuch as it is the result of an evolutionary process which had its initial stages in the very beginnings of American diplomatic history, and which it is therefore worth while to describe in this place.

On July 18, 1776, a committee of the Continental Congress reported a "plan of treaties to be entered into with foreign states or kingdoms", which, after some emendations, was adopted on September 17 following.<sup>1</sup> The instructions which were superadded to the plan on September 24 left the way open for many modifications of the provisions laid down in the plan, yet a comparison of the draft prepared by Congress with the treaty of amity and commerce concluded with France on February 6, 1778, shows that in language as well as in substance the plan was closely adhered to in that treaty.<sup>2</sup> The interesting fact is that this same plan appears in practically every negotiation for a treaty of amity and commerce which took place during the entire period of the Continental Congress. Articles might be added or subtracted, enlarged or reduced or otherwise modified, but the plan retains through all the changes an easily recognized identity.

The plan was drawn primarily to be used as a basis for negotiations with France, yet it is evident that the possibility of treating with other powers was held in view, and this idea took substantial form on December 30, when it was resolved: "That Commissioners be forthwith sent to the Courts of Vienna, Spain, Prussia and the grand Duke of Tuscany".<sup>3</sup> Franklin was at once chosen for the

<sup>1</sup> The plan as originally reported, showing the process of revision, is printed in the *Journals of the Continental Congress* (ed. W. C. Ford), July 18, 1776, and in its amended form, *ibid.*, September 17, 1776. The committee which drew up the plan was appointed on June 12 in pursuance of a resolution of June 11, that is, while the Declaration of Independence was yet brewing.

<sup>2</sup> The treaty with France is found in *Jour. Cont. Cong.*, May 4, 1778, and in *Treaties, Conventions, etc., between the United States and Other Powers* (ed. Malloy), I. 468-479.

<sup>3</sup> See the further resolves outlining the instructions, *Jour. Cont. Cong.*, December 30, 1776. This action was anticipated by some "additional instructions to B.F., S.D., and T.J.", October 16.

Spanish mission,<sup>4</sup> but the commissioners to the other courts, William Lee to Berlin and Vienna, and Ralph Izard to Tuscany, were not chosen until the following May.<sup>5</sup> The instructions to William Lee and Ralph Izard contain this clause: "For your better instruction herein, the commissioners at the court of Versailles will be desired to furnish you, from Paris, with a copy of the treaty originally proposed by Congress, to be entered into with France, together with the subsequent alterations that have been proposed on either side."<sup>6</sup> The efforts to negotiate with Spain were unsuccessful, Izard never went to Tuscany, and although William Lee did go to Vienna he found no opportunity to negotiate a treaty with that court.<sup>7</sup>

On retiring to Frankfort, however, in the summer of 1778, Lee took it upon himself to draw up with John de Neufville, representing the city of Amsterdam, what the negotiators considered to be "a proper treaty of commerce to be entered into" between the Netherlands and the United States.<sup>8</sup> Lee wrote to the Committee of Foreign Affairs on September 12<sup>9</sup> that the draft contained "all the substantially advantageous articles of the commercial treaty with France and some beneficial additions". It is evident from an examination of this project that Lee had before him not only the treaty with France but also the original plan which was drawn up in Congress nearly two years before. It may also be noted here that parts of Lee's draft not found in either of his models were incorporated into subsequent treaty projects. Lee avowed that he had no authority to sign a treaty with the Netherlands, but he repeatedly urged Congress to adopt measures for giving its sanction to the treaty which he had drawn.<sup>10</sup>

<sup>4</sup> January 1, 1777. On May 1 Arthur Lee was also appointed to negotiate with the Spanish court.

<sup>5</sup> Izard was elected on May 7, Lee on May 9.

<sup>6</sup> *Jour. Cont. Cong.*, July 1, 1777.

<sup>7</sup> See Schlitter, *Die Berichte des Ersten Agenten Oesterreichs in den Vereinigten Staaten von Amerika*, pp. 225-227; also Lee's correspondence in Wharton, *Revolutionary Diplomatic Correspondence of the United States*, II., and Sparks, *Diplomatic Correspondence of the American Revolution*, vol. II.

<sup>8</sup> Lee's project bears the date September 4, 1778. It is recorded in *Jour. Cont. Cong.*, under the date of February 22, 1779, and is also found in Wharton, *Dipl. Corr.*, II. 789-798. See also Van Berckel to Dumas, September 23, 1778 (*ibid.*, II. 738).

<sup>9</sup> *Ibid.*, II. 715.

<sup>10</sup> Letters to the Committee of Foreign Affairs, September 12, October 15, 1778, and February 26, 1779. *Ibid.*, II. 715, 789; III. 65. Lee also delivered a copy of his treaty to the commissioners in Paris, who intimated that at a proper time they would themselves take up the matter of negotiating such a treaty with the Netherlands. See the letter of the commissioners to William Lee, September 26, 1778 (*ibid.*, II. 744); cf. their letter to Dumas, October 16 (*ibid.*, p. 798). In fact such a step had already been taken. See the commissioners to Dumas, April 10, 1778 (*ibid.*, p. 545).

Lee's project came before Congress February 22, 1779, and there for several months remained buried. In October<sup>11</sup> of that year Henry Laurens was chosen to negotiate a treaty of amity and commerce with Holland, and a draft of a treaty was prepared for him. Again, however, there was a long delay, this time for more than a year, when the commission for this particular purpose was transferred to John Adams and the draft which had been drawn up for Laurens was somewhat modified and adopted. This was on December 29, 1780.<sup>12</sup> This plan of Congress shows its indebtedness to Lee's project as well as to the French treaty and the plan of September, 1776, for it includes some of Lee's "beneficial and agreeable additions"; on the other hand it omits some of those provisions, as it also modifies in places both the language and the matter of its three models.

Complications in Europe long postponed negotiations with the Netherlands,<sup>13</sup> but finally, on April 23, 1782, Adams laid before their High Mightinesses a project of a treaty "drawn up conformable to the instructions of Congress".<sup>14</sup> The precise form of Adams's draft is not known<sup>15</sup> but it probably differed but little from the treaty actually concluded on October 8 of that year, which includes provisions from Lee's project and the French treaty which are not found in the plan drafted in Congress, and also embodies other modifications, while retaining in large measure nevertheless the identical language of those projects.<sup>16</sup>

While the Dutch treaty was in progress of negotiation steps were taken toward concluding a similar treaty with Sweden. On June 25, 1782, Franklin wrote to Livingston that Sweden desired to enter into a treaty of amity and commerce with the United States, and

<sup>11</sup> See *Jour. Cont. Cong.*, October 21, 26, and 30; also November 16.

<sup>12</sup> See the plan in the *Journals* under that date. Dumas had, on March 15, 1780, sent to the Committee of Foreign Affairs a plan of a treaty with the Netherlands, but this plan has not been found and no evidence has been discovered that any use was made of it. See Wharton, *Dipl. Corr.*, III. 549; cf. Dumas to the President of Congress, March 21 (*ibid.*, III. 565), and Franklin to Dumas, April 23 (*ibid.*, III. 625).

<sup>13</sup> Congress had meanwhile (August 16, 1781) issued additional instructions to Adams. See the *Journals* and Wharton, *Dipl. Corr.*, IV. 636; see also some observations of a committee of Congress, July 17, 1782 (*Secret Journals of the Acts and Proceedings of Congress*, III. 144).

<sup>14</sup> Adams to Livingston, April 23, 1782 (Wharton, *Dipl. Corr.*, V. 325); cf. Adams to the President of Congress, January 14, 1782 (*ibid.*, p. 97); Dumas to Livingston, May 10 (*ibid.*, p. 409); and Adams to Dana, May 13 (*ibid.*, p. 415).

<sup>15</sup> But see Adams to Livingston, June 9 and 15, and October 8, 1782 (*ibid.*, pp. 482, 495, 803).

<sup>16</sup> The treaty is found in the *Journals* under January 23, 1783, and in *Treaties, Conventions, etc., between the United States and Other Powers* (ed. Malloy), II. 1233-1244.

he suggested that a particular power be given him for that purpose.<sup>17</sup> Accordingly on September 28 a draft of a treaty to be proposed to the Swedish government was adopted by Congress and sent to Franklin, together with appropriate commission and instructions.<sup>18</sup> The preparation of a special plan of a treaty with Sweden would appear to have been a work of supererogation, for the old plans were drawn forth and only subjected to minor alterations and some omissions.<sup>19</sup> By April 3, 1783, the treaty had been concluded and signed.<sup>20</sup> Franklin says of the treaty: "It differs very little from the plan sent me; in nothing material."<sup>21</sup> Notwithstanding this statement provisions which are not found in the draft sent to Franklin were incorporated from the French and Dutch treaties; moreover the language of the treaty was in greater degree recast than had been done in any previous instance.

Meanwhile Denmark was likewise manifesting a desire "to form as soon as possible reciprocal connexions of friendship and commerce" with the new republic, and that government's minister of foreign affairs, Rosencrone, suggested (February 22, 1783) that "the shortest way of accelerating these new connexions would be to take the treaty between the Congress and the States General for the basis."<sup>22</sup> Franklin responded (April 13) by sending such a sketch "formed on the basis of our treaty with Holland".<sup>23</sup> To Livingston Franklin wrote on April 15 that, while waiting for express powers from Congress, he had sent to the Danish minister for his consideration "a translation of the plan, *mutatis mutandis*, which I received from Congress for a treaty with Sweden".<sup>24</sup> On July 8 Rosencrone submitted a counter-project which was in most respects, both in form and substance, identical with the Swedish treaty, although embodying several modifications.<sup>25</sup>

<sup>17</sup> Wharton, *Dipl. Corr.*, V. 510. See also Adams to Livingston, December 14, 1782 (*ibid.*, VI. 133), and Franklin to Livingston, December 24 (*ibid.*, VI. 163).

<sup>18</sup> See *Jour. Cont. Cong.*, September 19 and 28, 1782.

<sup>19</sup> One unaccountable omission was the article concerning "liberty of conscience".

<sup>20</sup> The treaty is in *Jour. Cont. Cong.*, July 29, 1783, and in *Treaties, Conventions*, etc. (ed. Malloy), II. 1725-1735.

<sup>21</sup> Franklin to Livingston, March (April ?) 7, 1783. Wharton, *Dipl. Corr.*, VI. 276.

<sup>22</sup> Rosencrone to Walterstorff, February 22, 1783. *Ibid.*, p. 261.

<sup>23</sup> Franklin to Rosencrone, April 13, 1783. *Ibid.*, p. 372.

<sup>24</sup> *Ibid.*, p. 397; cf. Franklin to Livingston, June 12, 1783: "The treaty with Denmark is going on. . . . It is on the plan of that proposed by Congress for Sweden." *Ibid.*, p. 480.

<sup>25</sup> This counter-project is in *ibid.*, pp. 519-527, accompanying a letter from Franklin to Livingston, July 22-25, 1783.

Portugal next came forward with proffers of friendship and trade. On June 12, 1783, Franklin wrote to Livingston: "Portugal has likewise proposed to treat with us, and the ambassador has earnestly urged me to give him a plan for the consideration of his court, which I have accordingly done, and he has forwarded it."<sup>26</sup> Returning to the subject in his letter to Livingston, July 22, he wrote: "The ambassador of Portugal . . . appears extremely desirous of a treaty with our States; I have accordingly proposed to him a plan of one (nearly the same with that sent me for Sweden) and, after my agreeing to some alterations, he has sent it to his court for approbation."<sup>27</sup> On November 1 Franklin wrote to the President of Congress that the conclusion of the Danish treaty waited only for the commission and instructions from Congress, and that the treaty with Portugal was under consideration at the Portuguese court.<sup>28</sup> Inasmuch as the proposed treaties with Denmark and Portugal did not, in the period under consideration, reach fruition, it is aside from the purpose of this note to trace them further. It should nevertheless be here noted that after the coming of Jefferson in 1784 negotiations were renewed with both powers, and new, that is, somewhat modified, drafts were offered to the representatives of those governments,<sup>29</sup> but these projects likewise failed of consummation.

Up to this time special powers for negotiating and signing each particular treaty had seemed necessary; but now, since there appeared to be an inclination among the European governments generally to enter into treaties of amity and commerce with the United States, Congress issued on October 29, 1783, general instructions to the ministers at Versailles authorizing them to negotiate and sign treaties with all the powers with which treaties were desirable, and on May 7, 1784, adopted a new outline for such treaties.<sup>30</sup> On the same day Jefferson was joined to Adams and Franklin in the mission. This time no attempt was made to draw up a plan of treaties in specific form, but only fundamental provisions were laid down. Nevertheless the old plan continued to do duty, or what was essentially the same thing, one of the treaties already concluded was used as a model. Already, in March, 1784, Adams had begun negotia-

<sup>26</sup> *Ibid.*, p. 480.

<sup>27</sup> *Ibid.*, p. 580. The text of the plan is in *ibid.*, pp. 588-591.

<sup>28</sup> *Ibid.*, p. 721.

<sup>29</sup> See the reports of the commissioners to Congress, November 11 and December 15, 1784 (*Diplomatic Correspondence of the United States of America from the Signing of the Treaty of Peace*, I. 534, 544); Jefferson to Walterstorff, February 3, 1785 (*ibid.*, pp. 547-549), and *cf. post*, pp. 584, 585.

<sup>30</sup> See *Secret Journals* (Foreign Affairs), October 29, 1783, March 26, April 1, 2, May 7, and 11, 1784.

tions with the Prussian minister, who had "agreed to take our treaty with Sweden for a model, reserving to each party the right of suggesting such alterations as shall appear to him convenient".<sup>31</sup>

Shortly afterward that minister submitted to Adams a counter-project prepared at the Prussian court, retaining for the most part both the matter and the language of the Swedish treaty but introducing a few modifications.<sup>32</sup> Upon this Adams made some suggestions, and on June 7 wrote to the President of Congress that the treaty was ready for signature, unless Congress had other alterations to propose.<sup>33</sup> In August Jefferson arrived in Paris bringing the new commission and instructions, and the three commissioners now proceeded toward the perfection of the treaty.<sup>34</sup> The new instructions involved some additional provisions, and these were accordingly incorporated in a new project, which was transmitted to the Prussian minister on November 10.<sup>35</sup> Although negotiations were drawn out during several months with observations and counter-observations<sup>36</sup> the treaty which was finally concluded in July, 1785, was substantially this project with a few additions and omissions.<sup>37</sup>

This project is of especial interest because it was transmitted in its identical form, *mutatis mutandis*, to the courts of Portugal, Denmark, and Tuscany,<sup>38</sup> and with slight alterations to the representative of the Austrian government.<sup>39</sup> A part of it was also proposed as a treaty of commerce with Great Britain,<sup>40</sup> and in a con-

<sup>31</sup> Adams to the President of Congress, March 27, 1784. *Dipl. Corr. U. S. A.*, 1783-1789, I. 438. The same letter is in Wharton, *Dipl. Corr.*, VI. 782, with date March 2. See also Adams to the President of Congress, March 9 (*Dipl. Corr. U. S. A.*, I. 435), and Thulemeier to Adams, March 14 (*ibid.*, p. 439).

<sup>32</sup> The counter-project is in *Dipl. Corr. U. S. A.*, I. 443-453, inclosed in a letter of Adams to the President of Congress, April 10.

<sup>33</sup> *Ibid.*, p. 458. Adams's observations on the project are found at pp. 459-463. See also Adams to the President of Congress, May 13 (*ibid.*, p. 455).

<sup>34</sup> See the commissioners to Thulemeier, September 9. *Ibid.*, p. 505.

<sup>35</sup> *Ibid.*, p. 531. The proposed treaty is in *ibid.*, pp. 520-529.

<sup>36</sup> See, especially, Thulemeier to the commissioners, December 10, 1784 (*ibid.*, p. 545); the commissioners to Thulemeier, January 21, 1785 (*ibid.*, p. 546); Thulemeier to the commissioners, January 24 (*ibid.*, p. 553); the commissioners to Thulemeier, March 14 (*ibid.*, p. 554); Thulemeier to the commissioners, May 3 (*ibid.*, p. 578). Further correspondence concerning the treaty is found *ibid.*, pp. 580-600.

<sup>37</sup> The treaty was signed by Franklin on July 9, 1785, but the Prussian minister did not sign it until September 10. The treaty is found in the *Jour. Cont. Cong.*, under May 17, 1786 (*Secret Journals*, III. 25-43), and in *Treaties, Conventions*, etc. (ed. Malloy), II. 1477-1486.

<sup>38</sup> See the reports of the commissioners to Congress, November 11 and December 15, 1784. *Dipl. Corr. U. S. A.*, I. 534, 544.

<sup>39</sup> See *post*, p. 586.

<sup>40</sup> Commissioners to Caermarthen, April 4, 1786. *Dipl. Corr. U. S. A.*, I. 602-604.

siderably modified form it was offered to the Emperor of Morocco.<sup>41</sup> It has already been noted that the treaties with Portugal and Denmark were not in the end consummated, and the same is true of the treaty with Tuscany, although there appeared for a time fair prospects that the negotiations in all three instances would meet with ultimate success.<sup>42</sup>

The case of Tuscany deserves a further word. The project was transmitted on December 9, 1784,<sup>43</sup> to Favi, the Tuscan chargé d'affaires in Paris, who in turn transmitted it to his court. On August 26, 1785, Favi wrote to the commissioners that the grand duke had determined to accept the treaty, but that there were some amendments, which, though not changing the substance of the convention, were rendered indispensable by local circumstances and the regulations of the country.<sup>44</sup> The amendments proposed by the Tuscan court have not been found, but the observations of the commissioners upon them essentially reveal what the proposed alterations were.<sup>45</sup>

It has been seen that William Lee's efforts to negotiate a treaty with Austria in 1777 came to naught. Five years later he received indirect intimations that the Emperor was now desirous of entering into a treaty with the United States,<sup>46</sup> yet it was not until a year later that the Imperial government pressed its intimations upon the American ministers. Even then the suggestions were still indirect, for the Emperor desired that the first overtures should come from the side of the United States.<sup>47</sup> On July 13, 1783, Adams wrote to Livingston that the Emperor had caused it to be intimated in various ways that he wished to form a treaty,<sup>48</sup> and on July 22 Franklin wrote to Livingston: "I have it also from a good hand at the court of Vienna that the emperor is desirous of

<sup>41</sup> October, 1785. *Ibid.*, pp. 666-673. The treaty which was concluded with Morocco (January, 1787) differs still further from the project. The treaty is in *Jour. Cont. Cong.*, July 18, 1787, and in *Treaties, Conventions, etc.* (ed. Malloy), I. 1206-1212.

<sup>42</sup> See, especially, Jefferson to Jay, October 11, 1785, April 23, May 12, and August 13, 1786. *Dipl. Corr. U. S. A.*, I. 652, 725, 731, 804.

<sup>43</sup> *Ibid.*, p. 541.

<sup>44</sup> *Ibid.*, p. 578.

<sup>45</sup> *Ibid.*, pp. 583-591, accompanying a letter of the commissioners to Favi, June 8, 1785.

<sup>46</sup> William Lee to the Committee of Foreign Affairs, March 31, 1782. Wharton, *Dipl. Corr.*, V. 291.

<sup>47</sup> See Schlitter, *Die Berichte*, pp. 231-234.

<sup>48</sup> Wharton, *Dipl. Corr.*, VI. 538. Cf. Adams to Livingston, July 3, 7. *Ibid.*, pp. 510, 517.



establishing a commerce with us from Trieste, as well as Flanders, and would make a treaty with us if proposed to him."<sup>49</sup>

What were the preliminary conferences between Franklin and the Austrian ambassador the correspondence does not reveal, although it is evident that definite negotiations awaited powers and instructions from Congress. This step was taken by Congress on October 29, 1783, and an addition to the instructions was adopted on May 7, 1784. Accordingly Franklin wrote to the Austrian ambassador, the Comte de Mercy-Argenteau, on July 30 that upon the arrival of Jefferson the commissioners would be ready to enter into a treaty with His Imperial Majesty.<sup>50</sup> Mercy-Argenteau at once communicated with his government<sup>51</sup> and on September 28 announced the Emperor's assent to the negotiation. "When the particulars respecting this matter shall be sent to me", he added, "I shall instantly communicate them."<sup>52</sup> There was no further word upon the subject for considerably more than a year. The resumption of negotiations is described by Jefferson in a letter to Jay, January 27, 1786.<sup>53</sup> On May 12 he wrote to Jay that the ambassador had asked for propositions and that he had given him a draft, "which was a copy of what we had originally proposed to Denmark, with such alterations as had occurred and been approved in our negotiations with Prussia, Tuscany, and Portugal".<sup>54</sup> The Austrian government entered earnestly into the consideration of the project,<sup>55</sup> but meanwhile Jefferson's commission to sign such a treaty had expired,<sup>56</sup> and Congress failed to renew it.

<sup>49</sup> Franklin to Livingston, July 22-25. Wharton, *Dipl. Corr.*, VI. 580-591. The "good hand" was doubtless Jan Ingenhousz. See Franklin to Ingenhousz, May 16, 1783. Smyth, *Writings of Benjamin Franklin*, IX. 41.

<sup>50</sup> Wharton, *Dipl. Corr.*, VI. 817. Cf. Franklin to Thomson, November 11. *Ibid.*, p. 829.

<sup>51</sup> Mercy-Argenteau to Franklin, July 30. *Ibid.*, p. 817.

<sup>52</sup> *Ibid.*, p. 820.

<sup>53</sup> *Dipl. Corr. U. S. A.*, I. 713; *The Writings of Thomas Jefferson*, memorial edition, V. 265; cf. Jefferson to Adams, January 12 (*ibid.*, p. 248); Jefferson to Gerry, May 7 (*ibid.*, p. 315); and Jefferson to Monroe, May 10 (*ibid.*, pp. 325-333).

<sup>54</sup> *Ibid.*, pp. 335-338; *Dipl. Corr. U. S. A.*, I. 731.

<sup>55</sup> This is evidenced by the proposition of Kaunitz to the Emperor (*ante*, p. 576). It will be observed that this proposition bears a date anterior by some weeks to the time when Jefferson's project was submitted. See also Schlitter, *Die Berichte*, pp. 235-238, and Jefferson to Jay, September 26, 1786 (*Writings*, memorial edition, V. 424).

<sup>56</sup> The commission, which bore date of May 12, 1784, was to be in force not exceeding two years. See *Jour. Cont. Cong.*, May 7, 11, 1784 (*Secret Journals*, III. 489, 498); cf. Jay to Jefferson, October 27, 1786 (*Dipl. Corr.*, I. 794); Jefferson to Dumas, October 14, 1787 (*Writings*, memorial edition, VI. 341). Jefferson wrote to John Quincy Adams, March 30, 1826: "Austria soon after became desirous of a treaty with us, and her ambassador pressed it often upon me; but our commerce with her being no object, I evaded her repeated invitations." *Ibid.*, XVI. 160.

The draft which Professor Van Houtte has brought to light is undoubtedly that which Jefferson submitted to the Austrian ambassador, and the majority of its articles are identical with the corresponding articles of the Prussian treaty. The principal differences are the following: Articles II. and III. of the Austrian draft omit the clause found at the end of those articles in the Prussian treaty, "submitting themselves nevertheless", etc. Article V. of the project is much more ample than that incorporated in the Prussian treaty, but is identical with the corresponding article of the draft submitted to the Prussian minister.<sup>57</sup> Several articles, in fact, which vary from the Prussian treaty follow verbatim the original propositions. Aside from some small variations in article VIII. the last half of that article in the Prussian treaty (beginning "except those established") is omitted. The clause in article X. of the Prussian treaty, "and exempt . . . subjects", is not found in the Austrian draft. Article XII. of the Austrian project contains, however, the following clause not found in the treaty: "On the other hand, Enemy Vessels shall make Enemy Goods; insomuch that whatever shall be found in the vessels of an Enemy shall be confiscated without distinction; except such Goods and Merchandize as were put on board such Vessel before the Declaration of War, or within six Months after it, which shall be free." In article XIII. the Prussian treaty enlarged upon the draft submitted to Thulemeier, and the Austrian draft contains this further addition: "Nor shall any such Articles be subject to be taken or delayed in any case, if they be not in greater quantity than may be necessary for the use of the ship or of the Persons in it. And to remove all doubt respecting the Merchandize and Effects which shall be subject to the Arrangements in this Article, it is declared that they are the following, Canons (etc., as enumerated in the Articles of the armed Neutrality)." Article XX. of the Austrian project adds this clause: "unless bound thereto by some treaty now existing". Finally article XXI. omits from section 4 of the treaty the clause, "but by the judicature of the place into which the prize shall have been conducted".

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<sup>57</sup> See *Dipl. Corr. U. S. A.*, I. 520, and *cf. ante*, p. 584.